IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 2337 of 2004
To
FIRST APPEAL No. 2354 of 2004
with
FIRST APPEALS No. 2358 & 2361 to 2364 of 2004

For Approval and Signature:

HONOURABLE MR.JUSTICE A.L.DAVE

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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EMPLOYEES STATE INSURANCE CORP. - Appellant(s)

Versus

BOMBAY TILES CO. - Defendant(s)

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Appearance :
MR HEMANT S SHAH for the appellant.
MR PS GOGIA for the respondents.
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CORAM : HONOURABLE MR.JUSTICE A.L.DAVE

Date : 22/12/2005

ORAL JUDGMENT

1. By this set of appeals, the appellant-original opponent before E.S.I. Court No.1, at Rajkot, challenges the judgment and award passed by the E.S.I. Court,

Rajkot, on 1st April, 2004, in E.S.I. Applications No.22 of 1991, 24 to 45 of 1991 and 47 to 52 of 1991.

2. The applications were preferred by the respondent to challenge the action on the part of the opponent-appellant of making the provisions of the Employees' State Insurance Act (“E.S.I. Act” for short)applicable to the applicant/ respondent factories. The challenge was on the ground that they were seasonal factories and the provisions of the E.S.I. Act would not be applicable to them and, therefore, the demand by the appellant-Corporation for contribution to the scheme was not legal.

3. The stand taken by the appellant-Corporation was that the said Act is made applicable to all factories in Gujarat by virtue of a notification dated 20th October, 1989, amending the E.S.I. Act and these factories would fall within the ambit of definition of “factory” as per the new definition and, therefore, they were required to pay contribution.

4. The E.S.I. Court partly accepted the applications and ordered that the applicants were required to pay contribution from 20th October, 1989 to 31st May, 1993, whereafter they have been declared to be seasonal factories and, therefore, would not be required to pay the contribution. The Court also ordered that, if any contribution is paid, the same would be taken into consideration while computing the amount payable by the factories.

5. The factories have not challenged the said order but the E.S.I. Corporation has preferred this set of appeals on being aggrieved by the observations made in paragraph 15 of the judgment, where the E.S.I. Court observed that, in peculiar facts of the case, neither penalty nor compensation nor interest is required to be paid by the factory to the Corporation for the delayed payment of contribution.

6. While admitting these appeals, following substantial questions of law were framed:

> *"(1) Whether it is open for the ESI Court not to award interest in light of provisions contained in Section 39(5) of the ESI Act and the Regulation 31(A) of the Employees' State Insurance (General) Regulations, 1950?*
>
> *(2) Whether it is legal for the ESI Court not to award compensation as contemplated under Regulation 31(C) of the Employees State Insurance (General) Regulations, 1950, once it holds that the employer is liable to pay contribution for the period between 1.1.1992 to 2.6.1992 as Regulation 31(C) came to be inserted by a notification dated 6th December, 1991, which became effective from 1.1.1992?"*

7. Before proceeding to decide the above questions, the first question that is required to be examined by this Court is whether the respondent-factories were liable to pay the contribution or whether they can be

considered to be covered under the E.S.I. Act by virtue of the amended definition of 'factory'?

7.1 This very question cropped up before this Court in First Appeal No.1726 of 2004 and companion matters, where this Court has come to a conclusion that, if the factory is seasonal, it would not be governed by the provisions of the E.S.I. Act in light of Section 1(4) of the said Act.

7.2 Undisputedly, the factories have been held to be seasonal factories. Even the E.S.I. Court, in the judgment, in paragraph 12 has given a specific finding that the factories are seasonal and are working only for a period of less than seven months in a year. This part is not challenged by the appellant. It is also a fact that there is no material to show that the nature or method of working of these factories was different prior to the same being declared as seasonal factories by the Labour Commissioner and, therefore, this Court held that the factories being seasonal were not covered under the Act and were not liable to pay contribution.

8. The present case would be squarely covered by the said judgment and, if that is so, the questions posed before this Court regarding interest, penalty and compensation would not survive and would be rendered purely academic because if the appellant is not entitled to contribution from the factories, there is no question of charging any interest, penalty or compensation for alleged delayed payment thereof. In light of the answer to the preliminary question, the questions framed at the

time of admission of these appeals would become academic. The questions, therefore, are not required to be answered and are, accordingly, not answered. The appeals, therefore, would fail and are dismissed. No costs.

[A. L. DAVE, J.]

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